

DECISION of the Competition Council

No. 70 of 29.03.2006

regarding the State aid to be granted to S.C. UPRUC TAP-SDV S.A. Fagaras

The Competition Council

Taking into consideration the provisions of the European Agreement establishing an association between Romania and the European Communities and their Member States, ratified by Law no. 20/1993, published in the Official Gazette, Part I, no. 73 of 12.04.1993;

Taking into consideration the provisions of Competition Law no. 21/1996, republished in Romania's Official Gazette no 742, I Part of 16.08.2005;

Taking into consideration the provision of Law no 143/1999 on State aid, republished in the Official Gazette no. 744/16.08.2005, Part I;

Taking into consideration the provisions of the Regulation regarding the Regulation on the form, content and other details provided in the complaint regarding the State aid notification, adopted by Order no. 528/31.12.2004, published in the Official Gazette of Romania no. 82/25.01.2005;

Taking into consideration the provisions of the Regulation regarding the State aid for the rescuing and restructuring of the firms in difficulty, published in the Official Gazette Part I, no. 1215 of 17.12.2004;

Taking into consideration the provisions of the Guidelines regarding the qualification of an enterprise as an SME, published in the Official Gazette Part I, no. 314 of 14.04.2005;

Taking into consideration Decree no. 57/2004 on the appointment of the Competition Council;

Based on the following,

1. PROCEDURE

(1) By the note no. VP4/5741/21.12.2005, registered at the Competition Council no. RS-AS 125/22.12.2005, the Authority for the State Assets Recovery (hereinafter named AVAS) notified, based on art. 15 of *Law no. 143/1999 regarding state aid, republished*, the State aid measures intended to be granted to S.C. UPRUC TAP-SDV S.A. Fagaras (hereinafter UPRUC TAP) in the privatization context, as a restructuring aid.

(2) As the submitted information were not complete and exact, the Competition Council requested AVAS additional information by addresses no. DAAS/13/10.01.2006 and DAAS/114/27.01.2006. AVAS transmitted the required reply by addresses no. DCS/62/19.01.2006, DCS/641/21.02.2006 and DCS/683/23.02.2006.

(3) The notification became effective at the date when the information was accurate and complete, respectively on the 23.02.2006.

2. DESCRIPTION OF THE FINANCIAL SUPPORT MEASURES

(4) The financial support measures for UPRUC TAP will be granted under *E.G.O. no. 26/2004 regarding several measures for the achievement of the privatization of the undertakings within the portfolio of AVAS and the consolidation of several privatizations approved by Law no. 442/2004* and under *E.G.O. no. 37/2004 on measures to reduce arrears in the economy*.

(5) The support measures consist of facilities for the payment of overdue obligations, in amount of RON 8,675,321.01, namely exemptions in amount of RON 7,351,744.23 and rescheduling of the payment of the debts towards the consolidated State budget and of the commercial debts towards S.C. Distrigaz Sud S.A., in amount of RON 1,323,576.78, as follows:

Table no. 1 – Facilities to be granted to UPRUC TAP

No.	FACILITIES	AMOUNT -RON-	GRANTOR
1.	Exemption from the payment of the budgetary obligations overdue at 31.12.2003	3,161,143.26	MFP ¹
2.	Exemption from the payment of the interests and penalties of any kind related to the overdue budgetary obligations	3,869,899.59	MFP
3.	Exemption from the payment of the interests and delay penalties owed and overdue to the unique national social health insurance fund, took over from based on E.G.O. no. 95/2003	320,701.38	AVAS
	TOTAL EXEMPTIONS	7,351,744.23	
4.	Rescheduling of the payment of the overdue obligations	630,219.23	MFP
5.	Rescheduling of the payment of the obligations owed and overdue to	460,694.95	AVAS

¹ Ministry of Public Finance.

	the unique national social health insurance		
6.	Rescheduling of the payment of the obligations owed and overdue to AVAS as a result of the commercial claims from S.C. Distrigaz Sud S.A.	232,662.60	AVAS
	TOTAL RESCHEDULING	1,323,576.78	1,323,576.78
	TOTAL FACILITIES	8,675,321.01	8,675,321.01

Source: notification form

3. THE BENEFICIARY OF THE FINANCIAL SUPPORT MEASURES - UPRUC TAP

(6) UPRUC TAP is a joint stock company with the headquarter in Fagaras 1 Negoiu Street, Brasov county, having the registration number at the Trade Register J08/1097/1999 and CUI 12527617, fiscal attribute R. The beneficiary is located in the Centre Development Region, which is considered an assisted area, in accordance with the provisions of Art. 87(3) (a) of the EC Treaty.

(7) UPRUC TAP's main activity is the manufacturing and commercialization of the following industrial products (NACE code 2912):

- industrial reinforcements² and spare parts for reinforcements;
- pumps and spare parts for pumps;
- cast pieces.

In accordance with the information from the notification form, the cast products made by the company are enclosed in the Bruxelles Combined Classified List, namely in Romania's Custom Code, at the following positions: 7325.10.99, 7325.99.90, 8481.80.63, 8481.80.81, 8481.80.87, 8481.80.99, 8481.90.00, 8413.70.69, 8413.70.80, 8413.70.91, 8413.70.99 and 8413.91.90.

(8) As secondary activities, the company makes laboratory trials, thermo treatments, transports and executes models, SDVs and packing.

(9) The company's production activity takes place within two production sides, as follows:

- *The Casting Side* composed of 2 workshops, where there are manufactured cast pieces from stainless steel, carbon steel and non – ferrous metals, products that are used for manufacturing industrial faucets and centrifugal pumps;
- *The Mechanical Processing Side* is endowed with the tool – machines necessary for manufacturing industrial faucets and centrifugal pumps as finished products.

(10) UPRUC TAP was privatized in 2004, by signing the shares sale-purchase contract no. 52/19.07.2004. The shareholders' structure after the privatization is presented in the Table no. 2.

² Industrial faucets for water, gas, steam, chemical products.

Table no. 2 – UPRUC TAP's shareholders structure

SHAREHOLDERS	CAPITAL OWNING	
	Number of shares	Percent in the equity (%)
S.C. ROM-BLEI INTERNATIONAL S.R.L.	390,218	61.48
SIF	200,197	31.54
Other shareholders	44,235	6.98
TOTAL	634,740	100.00

Source: The notification form

(11) The company has a number of 213 employees. Its new main shareholder also controls another company. According to the *SME Guidelines*, we can say that UPRUC TAP is a linked company. UPRUC TAP is a medium size enterprise as the number of its employees, cumulated with the number of those within the undertakings belonging to the group, does not exceed 250 employees, and the cumulated turnover is smaller than Euro 50 million³.

4. Relevant markets

(12) UPRUC TAP participates on the following relevant markets: the industrial reinforcements' market, the market of pumps and the cast pieces' market. The company's products are commercialized mainly on the domestic market.

(13) According to a market study, annexed to the restructuring plan of UPRUC TAP, the market shares of the company on the domestic markets are as follows:

- the industrial reinforcements' market: 0.55%,
- the market of pumps: 0.28%,
- the cast pieces' market: 0.1%.

It can be seen that UPRUC TAP has insignificant market shares on its domestic markets.

(14) The industrial reinforcements' domestic market is divided between a small number of companies, which have significant market shares and which are, generally, experienced firms on this market, with traditional customers and well known brands. Among them there are S.C. Rominserv Valves-Iaifo S.A. Zalau, S.C. Robinete Industriale S.A. Bacau, S.C. Armatura S.A. Cluj Napoca. The markets of industrial reinforcements and pumps became more and more competitive when certain representatives of European firms (i.e. Alpha Valvole (Italy), Ari Armaturen, Erhart Armaturen, Grundfos (Germany), Verder (Holland) entered into the market.

(15) On the other relevant markets, UPRUC TAP's main competitors are the following:

- For pumps: S.C. Aversa S.A. Bucuresti, S.C. Timpuri Noi S.A. Bucuresti, S.C. Acqua Service S.A. Bucuresti, S.C. Mecanex S.A. Botosani;

³ All the linked companies have a total number of 244 employees and a cumulated turnover of approx. Euro 4.3 million.

- For cast pieces: S.C. Saturn S.A. Alba Iulia, S.C. ORION S.A. Campina, Kvaerner IMGB.

Besides the above- mentioned domestic competitors, UPRUC TAP's products also come into competition with the imported products.

(16) The beneficiaries of the products manufactured by UPRUC TAP are companies performing their activity in the chemical and petrol – chemical industry, metallurgical, celluloses and paper industry, food industry, as well as companies ensuring the transport of natural gas and administrate the thermo networks. The company's main customers are the chemical mills (S.C. Oltchim S.A. Ramnicu Valcea and S.C. Azomures S.A. Tg. Mures), S.N.P. Petrom S.A., S.C. Chimcomplex S.A. Borzesti, S.C. Uttis S.A Bucuresti, S.C. Mittal Steel S.A. Galati, Unicom Germany, Baker Germany and Ozfirat from Turkey.

(17) According to the market study, the demand for UPRUC TAP's products will increase as a consequence of the intense efforts made by the local communities towards the modernization of the distribution networks for the utilities (heating energy, water, natural gas, waste water stations). The increase of demand for reinforcements is also determined by the necessity to make investments in technology and especially environmental investments by the Romanian companies, in order to fulfill the European production standards. At the same time, it is forecast that there will be no significant changes in the structure of the supply on the relevant markets, namely it is not foreseen that any new producers will enter into the market.

5. FINANCIAL STATUS OF THE UNDERTAKING PRIOR TO PRIVATIZATION

(18) The evolution of the main economic and financial indicators registered by UPRUC TAP during 2001 - 2003 is as follows:

Table no. 3 – The evolution of the main economic and financial indicators of UPRUC TAP during 2001-2003

INDICATORS	2001	2002	2003
Turnover	6,094,557	6,510,688	6,977,034
Real turnover	6,094,557	5,314,847	4,941,242
Gross profit	179,483	-1,686,669	-2,736,245
Operating profit	590,362	-396,387	-2,728,618
Stock inventories (RON)	3,108,959	3,750,353	3,535,289
Stocking time (days)	183.64	207.37	182.41
Equity (RON)	1,594,050	-92,618	-2,828,863
Total debts (RON)	3,637,070	6,127,423	8,962,210
Receivables (RON)	897,977	1,015,816	1,300,106
Timing of accounts receivables	53.04	56.17	67.08

collection			
Indebtness degree (%)	228.17	-6,612.86	-316.81
Intermediate liquidity (%)	0.25	0.18	0.16

Source: Notification form

(19) From the analysis of the above-presented economic and financial indicators, registered by UPRUC TAP prior to privatization, it results that:

- the real turnover significantly decreased during the analyzed period, mainly due to the decreasing of the activity in the chemical and petro-chemical industries and of the enter into the market of cheaper but lower quality Chinese products;
- the undertaking registered negative results, mainly determined by the large amount of exploitation expenditures, especially of the costs with the employees;
- the company produced on stocks, without having an ensured sale, which lead to the immobilization of working capital and therefore, to the lack of cash necessary for acquiring raw materials;
- the receivables increase mainly due to the structure of the customers' portfolio (large enterprises from the chemical industry and state regies), which has a negative influence over the cash flow;
- the company is confronted with a long time of accounts receivables collection, when the maximum time period of the manufacturing cycle for its products is of 30 days;
- the debts registered a significant increase, the highest proportion being held by the overdue debts to the State consolidated budget.

(20) Other causes which placed the company in a difficult situation are:

- lack of an adequate marketing policy;
- high consumption of electricity and gas of the installations;
- non-correlation of employees' number with the decreasing activity;
- the non-observance of the products' quality and of the delivering terms as agreed by the beneficiaries;
- high percentage of the rejection quota of the cast pieces;
- non-observance of maintaining and capital repairing for the installations.

6. DESCRIPTION OF THE PRIVATIZATION PROCESS

(21) In 2004, AVAS offered for sale the main shares package owned in UPRUC TAP, representing 61.48% of its registered capital, namely 390,218 shares, by call bidding.

(22) The privatization process started on 11.06.2004 by advertising in newspapers "Adevarul" and "Ziarul financiar", and the local newspapers "Romaniay Maghyarszo" and "Obiectiv Brasov", as well as at the undertaking's headquarter and the headquarter of AVAS.

(23) Through the shares sale offer, potential buyers were informed on the possibility to request, in written form, according to the legislation in force, direct access to the technical, economic, financial and legal data concerning the company. Moreover, the presentation dossier stipulated that the company would benefit from facilities for the payment of debts due to the budgetary creditors, on the basis of Law no. 137/2002 and of EGO no. 26/2004.

(24) S.C. Rom-Blei International S.R.L. Bucuresti, S.C. Premier Bussiness S.R.L. Bucuresti and S.C. Dunav International Transport S.R.L. Lugoj submitted bidding offers and the winner was S.C. Rom-Blei International S.R.L. Bucuresti, which offered the highest price, namely 25,000 ROL/share.

(25) The privatization process was finalized by signing the share sale-purchase contract no. 52/19.07.2004, closed between AVAS and S.C. Rom-Blei International S.R.L. Bucuresti. The terms in which the privatization contract was closed were the following:

- making minimum 70% of the turnover from the main activity object for a 5 year period;
- observing the rights and obligations incurred by the working contract and maintaining the existing number of employees at the date when the contract was signed for the whole period of the investing program;
- ensuring the accomplishment of all environmental obligations and of the provisions from the conforming programs, annex to the environmental certificate for privatization;
- working capital injection and investments.

7. DESCRIPTION OF THE RESTRUCTURING PROGRAM

(26) The restructuring plan for 2005–2009 submitted to the Competition Council was drawn up by the company and the buyer and approved by AVAS. This plan includes the organizational, industrial and financial measures designed to intervene upon the causes incurring UPRUC TAP's difficulty.

(27) UPRUC TAP's restructuring is focused on the following main directions:

- merging the mechanical processing activities;
- modernizing the production sides;
- maintaining of the company's traditional production activities;
- diversifying the range of products, in order to adapt to the market demand.

(28) By implementing the restructuring plan, the company aims to accomplish the following objectives:

- obtaining the quality system certification from worldwide renowned organizations;
- to improve the performance of the company's main activity and the products' quality;
- to ensure financial balance;

- to diversify the clients' portfolio;
- to comply to the environment requirements.

(29) Synthetically, the measures included in the restructuring plan are as follows:

Table no. 4 – Summary of the measures enclosed in the restructuring plan - RON -

	Measures	Total cost	Own sources	Investor's sources	State aid
1.	Organizational measures	237,000	20,000	217,000	-
2.	Technological measures	3,170,000	2,190,000	980,000	-
3.	Environmental protection measures	163,000	-	163,000	-
4.	Financial restructuring measures	10,845,321	20,000	2,150,000	8,675,321
TOTAL RESTRUCTURING COST		14,415,321	2,230,000	3,510,000	8,675,321

Source: UPRUC TAP's restructuring program

(30) Implementing the restructuring program requires a total financial effort amounting RON 14,415,321 ; this plan seeks to return UPRUC TAP to viability.

7.1. Organizational restructuring

(31) The organizational restructuring encloses the following measures:

Table no. 5 – Measures on the organizational restructuring - RON-

Measure	Deadline	Cost	Financing		
			Own sources	Investor's sources	State aid
Implementation of a security and surveillance system	Q.IV 2005	77,000	-	77,000	-
Setting up a marketing department	Q.IV 2009	100,000		100,000	-
Obtaining the certificates ISO 9001/2000, CE and API for its products	Q.IV 2006	60,000	20,000	40,000	-
TOTAL		237,000	20,000	217,000	-

Source: UPRUC TAP's restructuring program

(32) By implementing an electronic surveillance system it is aimed to improve the security system of the company. The company aims to set up a marketing department and consolidate its policy for promoting the products by participating to fairs and exhibitions, elaborating advertising materials, contacting the possible beneficiaries and ensuring the post-guarantee service.

(33) By obtaining the API certifications, UPRUC TAP will become a supplier accepted by the oil industry, while the certification of the management system for its products' quality represents a must to participate to the biddings as well as a guarantee for its customers.

7.2 Technical restructuring

(34) The company's technological restructuring envisages mainly the modernization of the production sides, which implies:

- *Casting Side*: the equipments from this side are large consumers of energy, produce rebuts over the normal ceilings; due to the technical – economic and environmental demands it is necessary to replace them. It will be acquired: a upright sandblast installations, a centrifugal casting installation, an installation for melting 2 tons, with static converter and also the thermo-treatment oven will be modernized;
- *Mechanical Processing Side*: in order to reduce the raw consumption and increase the productivity it will be acquired 3 processing centers for manufacturing matrixes, faucets, 1 cutting off machine with continuous band and 1 machine for dynamic equilibrating. The acquisition of these equipments will allow the company to give up to the collaboration with third parties for the dynamic equilibration of rotors, but also to perform at its turn such services.

(35) For the purpose of the technological restructuring, the company aims to modernize its designing sector by endowing it with equipment and designing programs, so that it will be possible to re-design the products and manufacturing technologies in accordance with the CE and API standards, but also with the market's demands. Obtaining the certificates from the specialized organizations implies the certification of the laboratory and endowment of the production process with tools, devices and measure and control equipments. The compressor station's frequent damages, with negative effects on the production process, imposed the acquisition of two modern compressors, which will lead to the reduction of electricity consumption.

(36) The technological restructuring measures presented in table no. 6 amount to RON 3,170,000.

Table no. 6 Measures on the technical restructuring

- RON -

	Measures	Deadline	Cost	Own sources	Buyer's sources	State aid
1	Modernizing the casting side	Q.IV 2009	860,000	500,000	360,000	-
2	Modernizing the mechanical processing side	Q.IV 2009	1,096,000	900,000	196,000	-
3	Modernizing the designing sector	Q.IV 2006	20,000	-	20,000	-
4	Acquisition of tools, devices, measurement and control equipment necessary for production stages	Q.IV 2006	50,000	-	50,000	-
5	Certification of its own laboratory, in accordance with ISO	Q.IV 2008	200,000	200,000	-	-
6	Thermo- rehabilitating the production halls and acquiring a heating system	Q.IV 2008	400,000	250,000	150,000	-
7	Acquiring computers, telephone exchange and computer programs	Q.I 2005	120,000	-	120,000	-

8	Acquiring two steam rollers for compressed air production	Q.IV 2008	424,400	340,000	84,000	-
	TOTAL		3,170,000	2,190,000	980,000	-

Source: UPRUC TAP's restructuring program

7.3. Environmental protection restructuring measures

(37) UPRUC TAP will implement the compliance program for the environment protection. The environment restructuring cost is of RON 163,000 and it will be totally borne from the investor's sources.

Table no. 7 - Environmental protection restructuring measures - RON -

No.	Measure	Deadline	Cost	Financing	
				Beneficiary's sources	State aid
1	Connecting to the drinking water network and repairing the network	Q.IV 2006	25,000	25,000	-
2	Acquiring efficient filters in the production halls	Q.IV 2006	50,000	50,000	-
3	Bringing back into function of the ventilation system	Q.IV 2006	30,000	30,000	-
4	Acquiring ecological filters	Q.IV 2006	30,000	30,000	-
5	Re-arranging and renovating the cloakrooms	Q.IV 2006	28,000	28,000	-
	Total		163,000	163,000	-

Source: UPRUC TAP's restructuring program

7.4. Financial restructuring

(38) The financial restructuring encloses the following measures:

Table no. 8 – Financial restructuring measures - RON-

No	Measure	Deadline	Cost	Financing	
				Beneficiary's sources	State aid
1.	Facilities for the payment of the budgetary obligations	Q.IV 2009	8,675,321	-	8,675,321
2.	Claims' recovery	Q.IV 2006	20,000	20,000	-
3	Working capital from the investor	Q.IV 2008	2,150,000	2,150,000	
	Total		10,845,321	2,170,000	8,675,321

Source: UPRUC TAP's restructuring program

The restructuring plan, by its financial restructuring component, gives the possibility to ensure a stable cash flow, which will ease and relieve the company's financial and production activity. This way, the company will be able to pay its current debts to the State and to allocate the necessary liquidities in order to implement the programmed investments and necessary for the development and support of the production program for the future.

8. ASSESSMENT OF THE SUPPORT MEASURES – THE STATE AID CHARACTER OF THE NOTIFIED MEASURES

(39) The criteria used to establish whether or not a measure represents State aid is presented at art. 2 par. (1) of *Law no. 143/1999 on the State aid*, republished. According to the law, the State aid represents any support measure taken by the State or by the local administration authorities, or from State resources or from those of the local administration, regardless of the form, which distort or threaten to distort the competition, by giving an advantage to certain undertakings, to the production of certain services or that affects the trade between Romania and the Member States of the European Union, being considered as incompatible with the normal competitive environment.

(40) The financial support intended to be granted to UPRUC TAP in the context of its privatization consists of the State decision to renounce to certain incomes, therefore implies State resources.

(41) The financial support will be granted to a certain undertaking, namely UPRUC TAP having, therefore, a selective character.

(42) By the financial support measures⁴ which are to be granted, an economic advantage is given to UPRUC TAP. Granting these facilities will have a favorable effect on the company's economic and financial indicators, particularly on cash-flow. Therefore the company has an advantage, being favored in comparison to its competitors.

(43) The hypothesis that the facilities indicated above represent an advantage is valid in a non privatization context. Where such facilities are part of a privatization package, they should be analyzed in terms of whether or not they constitute state aid, by applying the prudent private investor test⁵. The State is acting like a prudent private investor/seller in the privatization context if it obtains the best price for the selling of its shares. The price paid by the buyer for the acquisition of the main share package - RON 975,545 - is considerably lower than the amount of the facilities to be granted, namely RON 8,675,321. However, a prudent investor creditor may be willing to accept a negative price if the cost of the privatization is less than the costs of liquidation. AVAS informed the Competition Council that they did not undertake any comparative analysis of the UPRUC TAP's liquidation and privatization costs prior to the privatization decision.

(44) Taking into account all the above, including any social costs assumed by the buyer, the Competition Council concludes that in this case the prudent private investor principle cannot be applied to the privatization of UPRUC TAP. Therefore, granting of these facilities constitutes an advantage to the company as indicated at para (42).

⁴ See para (5) of the draft decision.

⁵ It should be mentioned that generally the existence of conditions stipulated in the privatization contract leads to the non appliance of the prudent private investor test (see para () of the draft decision).

(45) At the same time, there is no doubt that the financial measures affect the trade with the Member States of the European Union, because UPRUC TAP's products compete on the market with other similar products manufactured by firms from the European Union.

(46) Therefore, the financial support measures that are to be granted to UPRUC TAP are considered as State aid and fall under the provisions of the Law no.143/1999, republished.

9. THE STATE AID'S COMPATIBILITY WITH THE LEGISLATION IN THE FIELD

(47) The State aid's objective is UPRUC TAP's restructuring in order to make the company viable again at the end of the restructuring period.

(48) The restructuring State aid must be conditioned by the implementation of a viable, coherent restructuring plan, to prove the company's long term viability. For this, the Regulation on the State aid for rescuing and restructuring firms in difficulty, published in OJ no. 1215/17.12.2004 (hereinafter named Regulation), issued in the implementation of Law no 143/1999, republished, stipulates that the restructuring usually implies one or more of the following elements: re-organization and rationalization of the company's activities on an efficient base, usually implying the closure of the activities generating losses, restructuring the existing activities which can become competitive again and, sometimes, their diversification towards new, profitable activities. The industrial restructuring must in principle go together with the financial restructuring (capital injections, reduction of the indebtedness ratio etc.)

(49) The Competition Council assesses the State aid to be granted to UPRUC TAP according to the criteria provisioned in the Regulation, envisaging:

- the firm's eligibility – sector activity field, firm in difficulty and affiliation to a group;
- restoration of the viability on a long term;
- prevention of excessive distortion of competition;
- correct dimensioning of the State aid measure, which shall be limited at the minimum necessary (proportionality of the State aid);
- observing the “first time, last time” principle;
- ensuring the fulfillment of the restructuring plan's objectives and permanently monitoring its implementation.

9.1. THE COMPANY'S ELIGIBILITY

9.1.1. Sectorial eligibility

(50) According to art.1 of the *Regulation on the state aid for rescue and restructuring and the state aid for closure in the steel sector*, enforced by the Order of the President of the Competition Council no. 40/02.03.2005, „the state aids for rescue and the state aids

for restructuring firms in difficulty from the steel sector, as defined in the Annex no. 1 to the *Multisectorial Regulation on the regional state aid for large investment projects*, (...) are forbidden”.

(51) The Competition Council concludes, based on the facts presented at point (7) that the cast products manufactured by UPRUC TAP are not steel products, as defined in the Annex no. 1 to the *Multisectorial Regulation on the regional state aid for large investment projects*.

(52) In relation to the above presented facts, the Competition Council considers that UPRUC TAP is eligible, from the point of view of its activity sector, to receive restructuring state aid.

9.1.2. Firm in difficulty

(53) In order to benefit from State aid, according to the Regulation, the company must be in difficulty. Within the meaning of the Regulation, the Competition Council considers that “a firm is in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term”.

(54) According to art.2 (2) (b) and (c) in the Regulation, “a joint stock company is considered in difficulty when it has lost more than half of its equity and more than a quarter of this equity was lost within the last 12 months and a company irrespective of its legal status is considered in difficulty when it complies the conditions to be submitted to the procedure provided by the legislation on the judicial reorganization and bankruptcy”.

(55) As it can be seen from the data presented in table no. 3, during 2001-2003, UPRUC TAP has lost more than half of its equity, namely from RON 1,594,050 in 2001 to RON –2,828,863 in 2003. At the same time, the company’s economic- financial situation is also emphasized by the assessment of the economic- financial indicators, as elaborated at point (19).

(56) The Competition Council concludes that the condition from art.2 (2) of the Regulation, necessary in order to consider that UPRUC TAP is „firm in difficulty”, is fulfilled.

9.1.3. Affiliation to a group

(57) According to the provisions of art. 2 (5) of the Regulation, a firm belonging to a group is not normally eligible for receiving rescue and restructuring State aid, except the case it can be proved that the company’s difficulties are its own and are not caused by the random allocation of the costs within the group and that the difficulties are too serious to be solved by the group itself.

(58) The difficulties of UPRUC TAP are of its own and do not result from arbitrary allocation of costs within the group; they are due to the high amount of overdue payments related to debts accrued prior to privatization.

(59) After privatization, the main shareholder of UPRUC TAP is S.C. Rom-Blei International S.R.L. Bucuresti, which controls also S.C. Upruc Serv S.A. Fagaras. From the supplementary information submitted by AVAS it resulted that the group (of which UPRUC TAP is a part of after privatization) had in 2004 a total turnover of RON 9,818,200 and a profit of RON 492,967. The profit is insufficient to cover the debts accrued by UPRUC TAP prior to the privatization, in amount of RON 8,675,321. Furthermore, S.C. Rom-Blei International S.R.L. Bucuresti committed itself to invest within the company an amount of RON 3,510,000.

(60) Based on the above analysis, the Competition Council concludes that the group of which UPRUC TAP is part of after privatization does not have the financial capacity to deal with the company's difficulties, respectively to cover its overdue debts.

9.2. Restoring the long term viability of the company

(61) According to art. 13 of the Regulation, restructuring aid is granted subject to the implementation of the restructuring plan (subject to an assessment by the Competition Council). The restructuring plan, duration of which must be as short as possible, should set out those loss-making activities the company intends to stop, and offer the company long term viability, allowing it to function with own resources. The restructuring plan must be based on a realistic assessment of the market conditions, the return to viability must result from the implementation of internal measures that, also takes into consideration external factors, such as prices and demand fluctuation, over which the company has very little influence.

(62) Given the difficult situation of UPRUC TAP at privatization, the restructuring of the company was decided and a restructuring program was drafted for 2005-2009. The summary of the restructuring measures of UPRUC TAP was presented at chapter 7.

(63) The analysis of the restructuring plan and the assessment of the ways to achieve the long term viability of UPRUC TAP take into account the provisions of art. 13 of the Regulation.

(64) The restructuring plan of UPRUC TAP starts with an assessment of technical and economic data reflecting the company's activity during the period prior to the privatization. This plan was elaborated after a diagnostic analysis showing the company's strong and weak points and the circumstances leading to the difficulties the company is confronted with.

(65) The restructuring strategy aims to preserve the company's strong points, namely: the tradition and experience in the field of cast pieces, pumps and industrial reinforcements, qualified work force, capacity to adapt the products' range to the market's demands. At

the same time it is aimed to limit and eliminate the weak points with specific measures such as: low quality of the products, low efficiency, high degree of worn out for some of the specialized equipments and installations, which are large consumers of fuel and energy.

(66) Prior to signing the privatization agreement collective disposals were made, the company reducing its workforce with 140 employees. Thus, one of the causes which might have affected the restoration of the company's viability was precluded from the beginning, before the launch of the restructuring plan. In order to eliminate the main causes leading the company being in difficulty, the company will take restructuring measures such as:

- modernizing the producing flows by acquiring new installations or by modernizing the existing ones in order to make the production more efficient;
- replacing of certain tool-machines and installations and of the heating system based on stoves, in order to reduce the consumption of electricity and gas;
- making investments in measurement and control equipments in order to survey the technological process, which will reduce the rejections;
- obtaining the certifications of the quality system from the worldwide renowned organizations, in order to certify its products and to participate to biddings;
- diversifying the customers' portfolio by an increased marketing activity.

(67) By applying the measures contained in the restructuring plan are estimated to improve the economic and financial indicators, as follows:

Table no. 11 Estimated evolution of the economic and financial indicators – RON –

Description of indicators		2005	2006	2007	2008	2009
1	Total revenues, of which:	9,919,600	10,888,000	11,240,000	12,110,000	21,030,600
	- Operating revenues	9,879,600	10,820,000	11,140,000	11,960,000	13,540,000
	- Net Turnover	9,455,000	9,940,000	10,675,000	11,750,000	13,430,000
	- Financial revenues	20,000	40,000	80,000	120,000	100,000
	- Extraordinary revenues	20,000	20,000	20,000	30,000	7,390,600
2	Total expenses, of which:	10,149,000	10,180,000	9,990,000	10,460,000	11,540,000
	a) operating	9,849,000	9,960,000	9,830,000	10,340,000	11,460,000
	b) financial	180,000	160,000	120,000	90,000	60,000
	c) extraordinary	120,000	60,000	40,000	30,000	20,000
6	Gross profit(+) / Loss(-)	-229,400	700,000	1,250,000	1,650,000	9,490,600
	Profit tax	-	-	-	-	4,475,000
7	Net profit (+) / Loss (-)	-229,400	700,000	1,250,000	1,650,000	5,015,600
8	Current assets - total, of which:	7,681,100	3,905,100	3,578,000	3,440,000	2,945,700
	a) Inventories	4,736,400	2,405,100	2,058,000	1,910,000	1,405,700
	b) Receivables	2,866,800	1,400,000	1,400,000	1,400,000	1,450,000
	c) Cash and investments	79,900	100,000	120,000	130,000	90,000
9	Debts - total, of which:	15,045,300	13,734,600	12,354,000	11,244,000	2,400,000

a) loans and assimilated debts	-	4,324,600	3,424,000	2,524,000	1,200,000
b) commercial debts	3,060,000	1,910,000	1,430,000	1,120,000	1,200,000
c) fiscal debts and health and social insurance debts	11,985,300	7,500,000	7,500,000	7,500,000	-
d) other debts	-	-	-	-	-

From the above-presented data it can be seen that the company's activity will improve, fact that is high lightened by the evolution of the turnover, which will increase with approx. 42% in 2009 in comparison with the level of 2005 and by the profit to be obtained and which until 2009, will be used to cover the company's prior losses.

Up to now the company achieved in part the restructuring measures, respectively: it has set up its own security and surveillance system, a marketing department, it has redesign product catalogues, obtained ISO 9001/2000 and EC product certifications. In addition, investments were launched to ensure the company's technological and environmental restructuring and the investor has contributed in amount of RON 1,200,000.

(68) After implementing the restructuring measures, the company forecasts to reach by 2009 the following target indicators:

Tabel no. 12 Target economic and financial indicators

Gross profit	RON	9,490,600
Net profit	RON	5,015,600
Turnover	RON	13,430,000
Equity	RON	8,815,700
Timing of accounts receivables collection	days	38.87
Debts payment duration	days	64.33
Indebtness ratio	%	27.22
ROA	%	44.72
ROE	%	56.89

Source: Restructuring program of UPRUC TAP

The restoration of the company viability derives mainly from the internal measures contained in the restructuring plan. Additionally, the positive trend of the markets where the company will activate was taken into account when establishing the company's viability. Therefore, the Competition Council deems that the proposed restructuring plan shall lead to the restoration of long term viability of UPRUC TAP.

9.4. Preventing excessive distortion of competition (compensatory measures)

(69) According to the provisions of the Regulation, in order to minimize as much as possible the negative effects on competition on the relevant markets affected by the granting of State aid, compensatory measures are necessary. These measures shall be proportionate with the distorting effects caused by the State aid and especially with the company's size and its relative importance on the relevant markets. Reducing the company's presence on the market will be established based on the market study annexed to the notification, as well as on any relevant information and will be part of the restructuring plan.

(70) In order to reach viability by the end of the restructuring period, the company will reduce its non-viable production capacities for pumps from 750 pieces to 500 pieces. This reduction of capacities is not considered a compensatory measure because these capacities were non-viable.

(71) Taking into account that UPRUC TAP is a medium size enterprise which owns insignificant market shares on the relevant markets it acts (see point (13)), compensatory measures are imposed in order to avoid the distortion of the competition, the following irreversible reductions viable capacities being part of the restructuring plan:

- reduction of the capacities in function for industrial reinforcements with 15%, namely from 9,000 pieces in 2004 to 7,650 pieces in 2009;
- reduction of the capacities in function for pumps with 10%, namely from 500 pieces in 2004 to 450 pieces in 2009.

(72) For this purpose, 152 assets which take part to the company's main activity object (such as: cranes, test benches, ovens, lathes, compressors, grinders, saws, etc) will be dismantled.

(73) Considering the above-mentioned facts, the Competition Council estimates that the State aid shall only be used for the company's return to viability, without allowing the beneficiary to extend its production capacity while implementing the restructuring plan.

9.5. State aid limited to the minimum necessary (proportionality)

(74) In accordance with the provisions of art. 15 of the Regulation, the State aid amount and intensity must be limited to the minimum necessary, to allow the restructuring according to the company and shareholders' existing financial resources. The State aid beneficiary must bring a significant contribution to the restructuring plan by its own resources, inclusively through the sale of assets which do not essentially contribute to the company's survival, or through external financing under market conditions.

(75) UPRUC TAP total restructuring costs of RON 14,415,321 is made of:

- | | |
|-------------------------------------|-----------------|
| - organizational restructuring cost | RON 237,000; |
| - technological restructuring cost | RON 3,170,000; |
| - environmental restructuring cost | RON 163,000; |
| - financial restructuring cost | RON 10,845,321. |

(76) UPRUC TAP restructuring cost is financed from the following sources:

- | | |
|--------------------------------|----------------|
| - company's own sources | RON 2,230,000; |
| - investor's capital injection | RON 3,510,000; |
| - State aid | RON 8,675,321. |

(77) The beneficiary's own contribution amounting RON 5,740,000, represents 39.82% of the restructuring costs, and is ensured by:

- | | |
|--|----------------|
| - capital injection by the main shareholder: | RON 3,510,000; |
|--|----------------|

- sale of tangible assets: RON 147,000;
- bank loan under market conditions: RON 1,660,000;
- capitalization of stocks RON 300,000;
- incomes from claims recovery: RON 123,000.

(78) In case of UPRUC TAP the State aid intensity, calculated as a ratio between the value of the State aid and the total restructuring cost, is 60.18%.

(79) The Competition Council considers as adequate the company's contribution of 39.82% to the implementation of the restructuring plan since UPRUC TAP is a medium sized company. This demonstrates the reliability in the practical value of the restructuring, as well as the fact that the value and intensity of State aid are strictly limited to allow a restructuring based on the existing financial resources of the firm and the majority shareholder. This avoids providing the company with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process.

9.6. Fulfilling the first time, last time principle

(80) UPRUC TAP did not previously receive restructuring State aid. Therefore, the provisions of art. 24 of the Regulation, stipulating that the restructuring State aid must be granted only once, are observed.

9.7. Monitoring and annual report

(81) In accordance with the provisions of art. 18 of the Regulation, the Competition Council permanently monitors the restructuring plan's implementation so that the established objectives are fulfilled.

(82) The Competition Council shall monitor the restructuring plan's implementation until the end of the period, in order to ensure that there will be no increases in the production capacities, serious diversions from the restructuring measures and that the State aid shall not lead to the creation of supplementary liquidities to be used for other activities than those enclosed in the restructuring program.

10. CONCLUSIONS

(83) Taking into account the above-presented reasons, the Competition Council finds that the individual State aid intended to be granted to UPRUC TAP is compatible with the normal competitive environment and does not significantly affect trade with the Member States of the European Union.

DECIDES

Art. 1. The financial support measures intended to be granted to UPRUC TAP represent State aid according to art. 2 (1) of the *Law no. 143/1999, republished*.

Art. 2. On the basis of art. 21 (2) (c) corroborated with art. 23 (1) (e) of *Law no. 143/1999, republished*, the restructuring State aid to be granted to UPRUC TAP at its privatization is authorized, under the condition of fulfilling art. 3 and art. 4 of the present Decision.

Art. 3. The company must implement in whole the assumed restructuring plan. The modification of the restructuring plan shall be done only if fulfilling the provisions of art. 19 of Regulation on the State aid for rescue and restructuring firms in difficulty, applied by Order of Competition Council's President no. 501/23.11.2004, published in Official Gazette no. 1215/17.12.2004.

Art. 4. The company shall reduce its production capacities by 2009, in accordance with the assumed Restructuring Program.

Art. 5. If the conditions imposed by the present decision are not fulfilled, the provisions of art. 22 of Law no. 143/1999 on State aid, republished, shall be applied.

Art. 6. The value of the State aid to be granted is RON 8,675,321.

Art. 7. This decision is applicable as of its date of communication.

Art. 8. According to the provisions of art. 32 of Law no. 143/1999, republished, the Authority for State Assets Recovery shall submit to the Competition Council information on the granted State aid, for its inventorying and monitoring. At the same time, the Authority for State Assets Recovery shall submit to the Competition Council annual reports on the implementation of the restructuring plan. The first report shall be submitted within 6 months from the date of issuance of this decision. The following reports should prove that the company fulfilled the compensatory measures on production capacities' reduction imposed by the present decision.

Art. 9. Pursuant to Art. 46 of *Law 143/1999 on State aid, republished*, this decision may be appealed by the interested persons at the Bucharest Court of Appeals, the Administrative litigation section, within 30 days from its communication.

Art. 10. This Decision shall be communicated by the General Secretariat of the Competition Council to:

- Authority for the State Assets Recovery, 50 Cpt. Av. Alexandru Serbanescu Street, Bucuresti;
- S.C. UPRUC TAP-SDV S.A., 1 Negoiu Street, Fagaras, Brasov County, postal code 505200.